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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communication Commission's	:	
Sixth Report and Order and Eleventh	:	
Order of Reconsideration in the Matter	:	MM DOCKET NOS.:
of Sections of the Cable Television	:	92-266 and 93-215/
Consumer Protection Act of 1992 (sic):	:	
Rate Regulation	:	FCC 95-196
	:	

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OPPOSITION TO MOTION FOR STAY

Service Electric Cable TV of Hunterdon, Inc., ("SECH") by its attorney, hereby submits its Opposition to the Motion for Stay ("Motion") submitted by the New Jersey Board of Public Utilities ("Board"), which Motion was submitted pursuant to 47 C.F.R. §1.429 (k) on or about August 11, 1995.

The Board has sought a stay of the effect of Paragraph 74 of the Sixth Report and Order and Eleventh Order on Reconsideration pending the disposition of the Board's contemporaneously filed Petition for Reconsideration ("Petition") to the Federal Communications Commission ("Commission") of that same provision and the rules related thereto.

As indicated by the Board in the Motion, SECH would appear to be a small system that would fall within the provisions of the rules adopted pursuant to Paragraph 74. The Board's Motion is basically a restatement of its Petition.

The Board makes no distinction between a stay affecting all small systems nationally or only SECH. If it is seeking a stay for all systems it would seem to lack sufficient factual information. If its intent is to stay the rule with respect to only SECH, then Constitutional issues concerning due process and equal protection

of the laws are implicated. In any event, as discussed below, the

Board is not entitled to the relief sought in either situation.

The argument upon which the Board relies to support the Motion is that "...the [SECH] subscribers will suffer irreparable harm resulting from the virtual deregulation of the cable operators rates ...the Board will loose substantial control over the rates... will not harm interested parties... because retroactive relief for operators [if the Board's Petition fails] [would be available].

The Commission has adopted the criteria that is used in the judicial setting to determine if a stay is warranted. Those criteria are:

- (1) the likelihood of irreparable injury to the petitioner in the absence of relief;

- (2) the injury to other parties in the proceeding that might follow if relief is granted;

- (3) the injury to the public interest that might result if the petition is granted; and

- (4) the likelihood that a petitioner might prevail on the merits on reconsideration.

In re Application of Chase, 4 FCC Rcd 5085, 66 Rad.Reg 2d 1312; 1989

Argument in Opposition

The Board's attempt at showing irreparable harm fails. Its argument is that rate deregulation is an irreparable harm to subscribers. Contrary to the Board's position the entire rate regulation focus under the Cable Television Consumer Protection and Competition Act of 1992 is that rates in a competitive setting will not be subject to regulation. The Board, formerly a leader in rate deregulation, now argues the law itself constitutes irreparable harm.

To qualify as irreparable harm, it must be both certain and great, actual not theoretical. Further, mere injuries, however substantial in terms of money, time and energy expended in the absence of a stay are not enough. Id. In re Application of Chase citing Wisconsin Gas V. FERC 758 F.2d 669 (DC Cir 1985).

Harm, if any, would be monetary and then only speculative at

this time. The Board has not met the first criterion and therefore a stay would be inappropriate as it must establish all four criteria to obtain such extraordinary relief.

Clearly SECH and those in like circumstances would be injured if it or they were deprived of the opportunity to seek the benefit of the well thought out and fair treatment of systems of the defined size and circumstances. The very reason for the modified treatment of those fitting the definition is the obvious need for such relief. The Board merely recites that there won't be any injury but does not support such a claim. It cites nothing related to any other company. It fails here also.

If the Board's arguments that it will loose control of rates and that retroactive rate relief is available are offered for the proposition that the injury to the public interest warrants the extraordinary stay, it also fails. "[C]ontrol of rates" is the problem, it is not the public interest. Rate regulation is not "control of rates". Deregulation is not the loss of "control". Indeed the public interest is harmed irreparably by an agency vested with the responsibility for rate regulation when it seeks to "control" rates. Rate regulation must be based on sound principles. Control of rates, as the Board seeks, is a negative arbitrary force.

The Board suggests the availability of retroactive rate relief. It does not cite where that relief would come from. New Jersey law has always precluded retroactive rate relief.

As to the likelihood that the Board will prevail on its Petition, the Board has not met its obligation here, nor in the Petition. The foundation that it makes for the Motion for the Stay is the same as it uses for the Petition. The foundation is insufficient for either request.

Finally, the Board's action authorizing the Office of Cable Television to file a Petition for Reconsideration did not include specific authorization to file this Motion with the Commission.¹

¹ Neither the Office of Cable Television nor the Deputy Attorney General that advises the Office of Cable Television release the Memoranda that are used to advise the Board of the discussion of a matter (whether requested or not). Further, the Minutes of the meeting at which the matter was discussed and acted on are not available at the time of this Opposition. I asked the Deputy Attorney General that was assigned this matter if the Board was asked or if it specifically authorized this filing of a Motion for a Stay. He indicated to me that the Board had not been asked

Conclusion

The Board has not met its burden here to obtain the extraordinary relief that it has sought. Its Motion for a Stay should be denied.

Respectfully submitted,



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nor did it authorize such filing.